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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/811,360	03/16/2001	Eugene M. Wolf	EWLF-1230	7725

7590 03/31/2003
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EXAMINER

BLANCO, JAVIER G

ART UNIT	PAPER NUMBER
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3738

15

DATE MAILED: 03/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/811,360

Applicant(s)

WOLF, EUGENE M.

Examiner

Javier G. Blanco

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-25,27-43 and 50-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-25,27-43 and 50-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4-6,9,11.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Response to Amendment

1. Applicant's cancellation of claims 2, 26, and 44-49 in Paper No. 12 is acknowledged.

Election/Restrictions

2. Applicant's election without traverse of the species embodied in claims 1, 3-25, 27-43, and 50-55 in Paper No. 14 is acknowledged.

Claim Objections

3. Claims 27 and 28 are objected to because of the following informality: claim 27 depends on cancelled claim 26. Claim 28 depends on claim 27. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 37 recites the limitation "the forming step" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 3738

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 3-25, 27-43, and 50-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kinnet (US 4,550,450 A; cited in Applicant's IDS) in view of Masini (US 5,571,203 A; cited in Applicant's IDS), Swanson et al. (US 4,042,980 A; cited in Applicant's IDS), and Chiron-Werke (DE 1164019; cited in Applicant's IDS).

As seen in Figures 1, 5, and 6, Kinnet discloses a total shoulder arthroplasty apparatus comprising a stemless humeral head (humeral component 10) for coupling to a cut humeral surface (see Figure 1). Said humeral head includes a base having a rotationally-stabilizing (see column 4, lines 40-42) base extension (fixation keel 21) protruding therefrom for impaction into a cancellous region of the cut humeral surface (see Figure 1; see entire document). Kinnett also discloses the claimed method of implanting the total shoulder arthroplasty apparatus (see columns 5-7). Although Kinnett shows the fixation keel 21 as having a slight depression (see Figure 1) and also that the fixation keel "provides increased mechanical advantages against torque and provides increased surface area of fixation" (see column 4, lines 40-42), he/she does not disclose the base extension as including a plurality of fins.

However, Masini teaches a prosthetic orthopedic device (see Figures 3-6) comprising a base extension including a plurality of fins (fins 310) in order to limit or prevent the rotational motion of the prosthetic orthopedic device relative to the anchor area/site (see column 4, lines

Art Unit: 3738

35-53). Masini also discloses that this plurality of fins (also referred to as anti-rotation means) “may be employed, or used in conjunction with a number of other bone-engaging orthopedic devices to prevent rotation” (see column 4, lines 51-53). Therefore, it would have been obvious to a person of ordinary skill in the art to have combined the teaching of a base extension including a plurality of fins, as taught by Masini, with the prosthetic orthopedic device of Kinnett, in order to limit or prevent the rotational motion of the prosthetic orthopedic device relative to the anchor area/site (i.e., cut humeral surface).

Kinnett does not disclose the fixation keel 21 as been linear. However, Swanson et al. and Chiron-Werke teach at least one linear fin extending from the base of the prosthetic orthopedic device in order to anchor the prosthetic orthopedic device and prevent or limit rotational motion of it relative to the anchor area/site (see Swanson et al.’s column 3, lines 3-8; see Chiron-Werke entire document). Therefore, it would have been obvious to a person of ordinary skill in the art to have combined the teaching of at least one linear fin extending from the base of the prosthetic orthopedic device, as taught by Swanson et al. and Chiron-Werke, with the prosthetic orthopedic device of Kinnett, in order to anchor the prosthetic orthopedic device and prevent or limit rotational motion of it relative to the anchor area/site (i.e., cut humeral surface).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Grammont (US 5,944,757 A), Rambert et al. (FR 2 578 739 A1), Wolfgang (DE 3917285 A1), and Wolf (WO 02/17822 A1).

Art Unit: 3738

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javier G. Blanco whose telephone number is 703-605-4259. The examiner can normally be reached on M-F (7:00-4:30), first Friday of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



Javier G. Blanco
March 21, 2003



David H. Willse
Primary Examiner